

	OAH 4-2500-19796-2 PUC E-015/GR-08-415
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota	PROTECTIVE ORDER
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The purpose of this Protective Order ("Order") is to facilitate the disclosure during the course of these proceedings of documents and information claimed by a producing party to contain trade secret or privileged information ("Trade Secret Information" or "Nonpublic Data"). Access to, review of, and use of Trade Secret Information or Nonpublic Data by parties shall be strictly controlled by the terms of this Order, so long as such access, review, and use is not inconsistent with Minnesota law.

The government agencies involved in this docket, which include the Minnesota Public Utilities Commission ("Commission"), the Office of Administrative Hearings ("OAH"), the Office of Energy Security ("OES"), and the Residential and Small Business Utilities Division of the Office of the Attorney General ("OAG"), are subject to the Minnesota Government Data Practices Act ("MGDPA") and applicable agency rules, and the records retention requirements of Minnesota Statutes §§ 138.163-138.226. The files of the Commission, OAH, OES, OAG, and other state agencies containing Trade Secret information or Nonpublic Data are governed by the MGDPA.

The use of the term "Party" in this Protective Order includes all parties to this proceeding. Government agencies and their employees are not subject to paragraphs 16, 18, and 19 of this Order, but government agencies and their employees are subject to all other provisions of this Order unless specifically stated otherwise.

Background

1. This matter was referred to OAH by the Commission for a contested case hearing in its Notice and Order for Hearing issued on July 21, 2008, in the above-entitled docket.

2. During the proceeding in this matter, Parties may file, request and use Trade Secret Information or Nonpublic Data, as such terms are defined in Minnesota Statutes § 13.02.

3. Minnesota Statutes § 14.60, subdivision 2, allows the Administrative Law Judge in a contested case to conduct a closed hearing to discuss Trade Secret

Information or Nonpublic Data, issue necessary protective orders, and seal all or part of the hearing record.

ACCORDINGLY, IT IS HEREBY ORDERED:

4. For purposes of this Order, the term "Disclosing Party" means the Party that first furnishes and designates data as Trade Secret Information or Nonpublic Data under this Order and the "Receiving Party" means a Party that receives Trade Secret Information or Nonpublic Data from the Disclosing Party under this Order.

Trade Secret Information or Nonpublic Data

5. Trade Secret Information or Nonpublic Data shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order.

6. When exchanging information, Parties must comply with the procedures for handling Trade Secret and privileged data established by Minnesota law, including statutes, rules, and the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data ("Commission's Procedures"). In accordance with the Commission's Procedures, all documentary material claimed to be Trade Secret Information or Nonpublic Data shall be marked substantially as follows by stamping each individual page with the designation "**NONPUBLIC DOCUMENT--CONTAINS TRADE SECRET [OR NONPUBLIC] DATA.**" All copies of document pages containing protected data shall be provided on yellow paper. The failure to provide the information on yellow paper does not result in a waiver of its designation as Trade Secret or Nonpublic.

7. Notes made by persons given access to Trade Secret Information or Nonpublic Data pursuant to this Order which contain or are derived from Trade Secret Information or Nonpublic Data shall be subject to the terms of this Order. Any Trade Secret Information or Nonpublic Data provided in photographic, digital, or electronic formats shall be identified as protected by the Disclosing Party by means appropriate to the medium and in accordance with Commission's Procedures, and shall be handled by the Receiving Party in a manner suitable to protect its confidentiality.

Use of Trade Secret or Nonpublic Data and Persons Entitled to Review

8. All Trade Secret Information or Nonpublic Data made available pursuant to this Order shall be given by a Disclosing Party solely to counsel for the Receiving Party or other authorized persons who are designated by counsel and have executed Exhibit A, as described in Paragraph 16 and attached to this Order, in a timely manner prior to their receipt of the Trade Secret Information or Nonpublic Data. Employees of government agencies are not required to sign Exhibit A to receive Trade Secret Information or Nonpublic Data. In instances where Trade Secret Information or Nonpublic Data is received by government agency employees, such employees shall safeguard and handle the Trade Secret Information or Nonpublic Data in accordance with the MGDPA. A government agency's non-employee witness or expert must

execute Exhibit A, as described in Paragraph 14 of this Order, in a timely manner prior to receive Trade Secret Information or Nonpublic Data.

9. Unless otherwise provided in this Order, all Trade Secret Information or Nonpublic data will be safeguarded and handled by Parties in accordance with Minnesota law, including the Commission's Procedures.

Challenge to Nonpublic or Trade Secret Designation and Other Special Requests

10. This Order establishes a procedure for the expeditious handling of Trade Secret Information or Nonpublic Data. It shall not be construed as an agreement or ruling on the discoverability, confidentiality or designation of any such information or data. By furnishing Trade Secret Information or Nonpublic Data pursuant to the terms of this Order, a Disclosing Party represents in good faith its belief that the information provided constitutes Trade Secret Information or Nonpublic Data as defined by Minnesota Statutes Chapter 13.01 et seq., and acknowledges that any Trade Secret or Nonpublic designation may be challenged by another. Prior to the Administrative Law Judge issuing his report, a Party may upon prior notice request the Administrative Law Judge to have documents or other materials that have been designated as Trade Secret Information or Nonpublic Data removed from the protective requirements of this Order or to have them handled in a manner differently than described in this Order (i.e., with greater or lesser confidentiality protections). If the Trade Secret Information or Nonpublic Data designation is challenged before the Administrative Law Judge, proceedings shall be conducted in camera under circumstances such that only those persons duly authorized hereunder or otherwise by law to have access to such Trade Secret Information or Nonpublic Data shall be present. The record of such in camera hearings shall be marked "**NONPUBLIC DOCUMENT-CONTAINS TRADE SECRET [OR NONPUBLIC] DATA**," unless the ALJ determines that the proceeding should not be classified as involving Trade Secret Information or Nonpublic Data. After the Administrative Law Judge issues his report, all such requests may be presented to the Commission in a manner consistent with the Commission's Procedures.

Use of Trade Secret Information or Nonpublic Data in Comments or Pleadings

11. Where reference to Trade Secret Information or Nonpublic Data is used by any Party in pleadings, briefs, or written motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Trade Secret Information or Nonpublic Data shall be placed in a separate "Nonpublic" copy of the pleading or brief and submitted to the Commission or OAH pursuant to the terms of the Commission's Procedures. This "Nonpublic" copy shall be served by Parties only on government agencies and their attorneys and on other parties' counsel of record (one copy each) who have executed Exhibit A, described in Paragraph 16 and attached to this Order. All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

Use of Trade Secret Information or Nonpublic Data in Depositions

12. In the course of depositions, counsel for any Party may request that the court reporter record Trade Secret Information or Nonpublic Data testimony in a confidential transcript that is marked "**NONPUBLIC DOCUMENT--CONTAINS TRADE SECRET [OR NONPUBLIC] DATA.**" All Exhibits which have been marked as containing Trade Secret Information or Nonpublic Data shall be attached to the confidential transcript and marked consistent with the Commission's Procedures. Each Party has the right to identify a transcript or exhibits as including Trade Secret Information or Nonpublic Data pursuant to this paragraph for up to three business days after the deposition is completed.

Use of Trade Secret Information or Nonpublic Data in Hearings

13. No Receiving Party shall use Trade Secret or Nonpublic Data in a hearing without first (a) providing prior notice to the Disclosing Party identifying the information to be used and (b) conferring with the Disclosing Party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the Parties cannot reach agreement regarding the use of such information during the contested case hearing, then the dispute shall be submitted to the Administrative Law Judge before the information is used or publicly disclosed. Without limiting the foregoing, no Receiving Party shall disclose Trade Secret Information or Nonpublic Data in oral testimony, cross-examination or argument except in accordance with this paragraph. In addition to the justification requirements of the Commission's Procedures, and if deemed necessary by the Administrative Law Judge, the Disclosing Party shall prepare a written summary of the Trade Secret Information or Nonpublic Data at issue to be placed in the public record. Use of Trade Secret Information or Nonpublic Data in hearings before the Commission is governed by the Commission's Procedures.

Reservation of Rights

14. This Order does not affect the right of any person, Party, or their counsel to question, challenge, and object on the grounds of relevancy or materiality to the admissibility of any and all data, information, studies, and other materials furnished under the terms of this Order in response to interrogatories, requests for information or documents, or cross-examination.

Inadvertent Disclosure

15. Either before or after designation of Trade Secret Information or Nonpublic Data has been claimed by the Disclosing Party, inadvertent disclosure of such data by any Party without the appropriate designation will not affect the Trade Secret or Nonpublic status of the information or data so long as the Party disclosing the information or data thereafter gives written notice to the Receiving Parties of such

information or data that it should have been designated as Trade Secret Information or Nonpublic Data.

Nondisclosure Agreement Required

16. Prior to giving access to Trade Secret Information or Nonpublic Data as contemplated in this Order to any expert or witness, whether or not such expert or witness is a person designated to testify in any such proceeding, counsel for the Party providing the Trade Secret Information or Nonpublic Data shall deliver a copy of this Order to such person; and prior to disclosure such person shall agree in writing to comply with and be bound by this Order. Trade Secret Information or Nonpublic Data shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit A and until the 24-hour notice required by this paragraph has been given. The Exhibit A Nondisclosure Agreement shall require the person to whom the disclosure is to be made to read a copy of this Order and certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address and employer, and the name of the Party with whom the signatory is associated. Such Nondisclosure Agreement shall be delivered to counsel for the Disclosing Party at least 24 hours, excluding weekends and holidays, prior to the expert or witness gaining access to the Trade Secret Information or Nonpublic Data. If counsel for the Disclosing Party notifies the Administrative Law Judge of an objection within the 24 hours, no Trade Secret Information or Nonpublic Data shall be provided to the expert or witness until so ordered by the Administrative Law Judge. This paragraph does not apply if the witness or expert to whom the Trade Secret Information or Nonpublic Data is disclosed is an employee of a government agency.

Information Provided to Government Agencies and Their Consultants

17. Consultants or experts retained by a government agency who are not employees of a government agency are governed by the terms of this Order, including Paragraph 16, and must sign an Exhibit A to access and review Trade Secret Information or Nonpublic Data, and must agree to comply with all of the provisions applicable to Parties in this matter. Government agencies must comply with the requirements of Paragraph 16 before providing Trade Secret Information or Nonpublic Data to outside experts and consultants they have retained.

Use of Trade Secret Information or Nonpublic Data

18. All persons accorded access to Trade Secret Information or Nonpublic Data pursuant to the terms of this Order shall use such Trade Secret Information or Nonpublic Data solely for the purpose of this proceeding and solely in accordance with this Order, and not for purposes of business or competition, or for any other purpose or in any other manner except as required by law. Trade Secret Information or Nonpublic Data shall not be used or disclosed except for purposes of this proceeding and as needed for all subsequent appeals of the final order in this proceeding.

Return

19. Unless otherwise ordered by the Administrative Law Judge or agreed to by the Disclosing Party, all Trade Secret Information or Nonpublic Data in possession of a Receiving Party, including transcripts of any depositions marked Trade Secret Information or Nonpublic Data or placed under seal by the Administrative Law Judge, shall be returned to counsel for the Disclosing Party within 30 days after final settlement or conclusion of this matter including administrative or judicial review thereof.

Dated: August 15, 2008

s/Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota	EXHIBIT A TO PROTECTIVE ORDER
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I, the undersigned, hereby acknowledge that I have read the attached Protective Order dated August 12, 2008 governing access to and use of Trade Secret Information and Nonpublic Data in Minnesota Public Utilities Commission Docket No. E-015/GR-08-415, OAH Docket No. 4-2500-19796-2, and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive materials designated **"NONPUBLIC DOCUMENT--CONTAINS TRADE SECRET [OR NONPUBLIC] DATA"** under the terms of said Protective Order, or any copies or extracts of information derived therefrom, which have been disclosed to me. I further agree to use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing said Protective Agreement and Order.

Dated: _____, 2008

Signature

Type or Print Name

Address

Name of Employer

Name of Party